

## A REFUTATION OF THE "RIGHT TO LIFE" RATIONALE FOR

### THE PROHIBITION OF ABORTION

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The object of this essay is to provide a refutation of rationales for the prohibition of abortion which claim the "right to life" as their major moral argument. The task of this essay is to isolate and identify prohibitionist arguments implying consistency with the concept of natural rights. As any number of subjectively based theories of "rights" exist, an objectively derived concept of rights is established in this essay as the means for demonstrating the fallacies of the prohibitionist position.

The arguments for the prohibition of abortion are followed in each case by appropriate rebuttal. Dividing the anti-abortion arguments into distinct categories has been difficult, as their proponents tend to oscillate from a more or less pure adherence to natural rights to emotionally-tinged rationales for social coercion. This essay attempts to preserve the abortion arguments as close as possible to their original content while simultaneously portraying them in their logically strongest form. This too has been difficult since there is no way of avoiding the self-defeating misconceptions to which the abortion prohibitionists fall prey.

The "right to life" movement's focus of struggle with the feminist movement appears to have contributed the superficial character of its rights thesis. As the feminist movement in general has fallen under the aegis of socialist doctrine and has no true interest in a consistent concept of rights, its attention is centered on political expediency and collective privilege. The political and legal focus of the "right to life" movement to overturn federal and state laws has not accentuated the quest for truth in the matter. The search for political allies in instituting legal prohibition of abortion has tied the issue with more nebulous and intellectually unresolved problems such as the decline of familial values, parental-versus-state control over children, sex education, contraceptives for minors, bussing for racial integration and other issues. Arguments have centered on the human status of the fetus and the cruelty of abortion methods. It is not surprising that the major philosophical issues have barely been touched.

The abortion prohibition movement is heterogeneous in its composition but a clear thread of philosophical misunderstanding is discernable: it is inconsistent with individual rights. The willingness to sacrifice principle to emotion, custom and political expediency, is symptomatic of a set of cultural values riven with contradictions. What few understand is that the central intellectual issue of the future, is the ethical superiority of rational egoism and the political-economic necessity of individual personal sovereignty against the collective demands and impositions of the State.

It is a tragic irony that the conservative right-to-life movement, one of the self-proclaimed heirs to the classical-liberal movement, is



unwittingly producing a rationale for social coercion, and in so doing, committing the future of individual rights to oblivion. Undoubtedly, the ranks of the anti-abortionists contain many who sincerely oppose legalized abortion as a step towards state-sponsored euthanasia. Their understandable fear of the State and its tendency to warp all human action into its worst forms does not excuse the defenders of prohibitionism from the ethical imperative to reason and adopt consistent premises. On the other hand, the bulk of the movement appears to be manned by those whose interest in a reasoned definition of rights is at best secondary to their true cause - promoting the ascendancy of fundamental sectarian theological premises rooted in the logically inapproachable authority of other-worldly mysticism. For the latter, this essay can only serve as a secular taunt to their faith. However, for those for whom reason remains paramount, the arguments presented here should offer them pause to reconsider their position and their allegiances.<sup>1</sup>

The abortion prohibition thesis, reduced to its essentials, asserts the embryo-fetus to have human status immediately upon conception and corollatively a right to live free from harm. Any attempt to abort on the part of the mother is, thus, considered an act of criminal assault against which social force should be instituted in the form of criminal penalties. Aside from the emotional fetus-pity propaganda, their basic reinforcing arguments against the protest that women are being forced into bondage to support unwanted dependents are that: (1) women incur a responsibility to the fetus by the act of copulation which leads to conception and thus must remain subject to the unlimited demands of the fetus and; (2) they assert there is virtually no means of removing the fetus without requiring its destruction or, at least, severely reducing its chances for survival; thus, in any case constituting criminal assault, if not cruel infanticide. A third, and generally unstated premise underlying the first two, is that the rights of the capable and the personally strong may ethically be sacrificed through the imposition of social (government) sanctions in order to protect the needs of the weak. This, of course, is one of the essential moral props of statist ideology.

Seemingly, without resorting to theological and other non-rational positions, the "pro-lifers" have fielded what they consider compelling moral arguments against abortion. And it must be said in all fairness that the "liberal" supporters of abortion rights have mobilized an exceedingly shallow

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<sup>1</sup>And here I must state my sympathy with John D. Lofton, Jr.'s (New Guard, May 1976) complaint against the attempt to employ an anti-papist ad hominem to stigmatize the anti-abortion position. Even if the argument against abortion were being mouthed only by the most sectarian Roman Catholics, it would have no bearing on judging the truth of the matter. The Religious Coalition for Abortion Rights is obfuscating the abortion question more than clarifying it by making it a matter of religious freedom. On the other hand, concern about the pronounced tendency of the Roman Church to enforce its views through the use of political power and legal enforcement is certainly understandable. Although the "right to life" issue may not be a sectarian issue; the previous prohibition on divorce in Italy and the anti-contraception laws in France most certainly are.



and dubious rationale, alternating between a defensive and often apologetic claim to the non-human character of the fetus, to the waging of a strident feminist special pleading.

The anti-abortionist position is wrong, however, not because of the questionable human status of the embryo-fetus, or because of a prior discrimination against the female sex. It is wrong precisely in its main arguments. The human status of the fetus is not the central issue, and for the sake of argument, this essay concedes the full human status of the embryo-fetus from the moment of conception. Secondly, the issue is not the questionable desirability of abortion, for it must be readily conceded to be so. The issue is one of rights and the individual's protection from apriori and arbitrarily imposed obligation.

Even more fundamentally, it centers around the issue of the willingness to accord equal recognition of rights to both female and embryo-fetus, not on an emotional evaluation of need or relative vulnerability but on the individual's absolute self-ownership. Central in this, is the careful definition and clarification of how responsibility and liability are acquired by volitional entities.

The "right to life" is a misleading generalization unless it is understood to mean the individual's right to his or her own life! Consistency requires that every individual be accorded this right. However, no individual may enforce an unwilling burden on another without transgressing against that person's rights, and effecting by precedent, a repudiation of the "right to life". To have meaning, the "right to life" must be equally accorded.

The very statement "right to life" implies a theory of right. The "right" to anything cannot be understood unless the concept of right is itself explicitly defined and logically related to the context of an ethical premise. The concept of "right" is not an arbitrary idea, or a whim of lawmakers, it is a concept which describes a fundamental necessity relating to the integral nature of being conscious. Right, as a legal concept, occupies a transition from ethical principles to the practical implementation of these principles into the legal code of a society.

A self-determining entity must possess itself to control the course of its continued existence, or have the major condition of its existence debased, and the success of its continued existence as a conscious being jeopardized. The integrity of an individual moral identity requires an absolute conceptual recognition of a freedom of choice and action in determining the condition of its mind, body and justifiably acquired possessions.

The major condition of a conscious existence is one's capacity to exercise control over one's actions. Conscious self-aware identity requires assurance of control over the instrumentalities for action. To live and to continue to be conscious one must have control over the physical means which one has justifiably acquired. The mutual recognition of what belongs to oneself and to others is the basis of right. Control over oneself, i.e., self ownership, and all things in which one has invested one's life (time, energy, intelligence and other previously acquired materials) without the initiation of force or the breach of agreement against other conscious beings, is a necessary condition for the successful operation of conscious existence. It is concomitantly the prerequisite for effective ethical



choice. All ethical choices are made by individuals. A choice cannot be effected without use and control over physical properties. Thought itself requires the physical instrument of the brain. An individual may not be held ethically responsible for what is carried out under physical instrumentalities possessed by others. Thus, the physical existence and ethical identity of a rationally conscious self-aware being most fundamentally requires for its function a right to itself. The theory of right is an abstraction based on the objectively required proprietary relationships existing between self-determining beings.

The ethical recognition and legal codification of human right must remain consistent with an objective understanding of human nature and the nature of the universe. The principle of right must be consistent in its application in order to serve its function as a means of protecting and enhancing conscious life. A right is, thus, not a privilege granted by a higher authority -- it is a conceptual recognition of human nature and what must be accorded in the successful conduct of human life. Although the exercise of one's right can be thwarted; the right itself can never be eradicated. It is a condition which inheres from the nature of rationally conscious life. As such, the right of an individual to his or her own life, and to everything justifiably gained in that life, can never be extinguished by society, i.e., a collection of individuals. No group may rationally arrogate to itself the power to infringe on the right of the individual to his or her own life. An individual's life is an end in itself, and the right to one's life may not be abrogated to serve another end anymore than the right may be regarded as a privilege delegated by another person or group of persons. A right to one's own life and its product, however, is not a "right" to enslave others or to interfere in their lives except in self defense against an objectively definable infringement or threat. An individual's right to his own life imposes no moral, and thus, legal obligations on another "except" as Ayn Rand correctly states "of a negative kind: to abstain from violating his or her rights."<sup>2</sup>

The "right to life" is often misunderstood to connote an implied obligation by all humans to each other.<sup>3</sup> More specifically, the general ethos produced in judaeo-christian culture enforces an automatic debt on the capable and the strong to the disabled and the weak. It has become an unquestioned article of faith that permeates every major institution and prevailing cultural attitude. This complex of group mores and institutions which places a moral, and what ultimately is translated into a legally enforceable, obligation on the individual to sacrifice his own interests to the lives of others, must ultimately clash with a full and consistent recognition and defense of individual rights required by a rational egoist ethic.

It is not surprising, thus, that the abortion issue focusses on the most obvious challenge to the doctrine of self-sacrifice. The embryo-fetus is a nearly perfect symbol of christian innocence, weakness, and vulnerability

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<sup>2</sup>Ayn Rand "Man's Rights", The Virtue of Selfishness p96.



as contrasted against the all-powerful and controlling mother-host. No better contrast could be found between rationally egoistic and logically rightful protection of self and the potentially coercive, collective redistribution of individual property for the sake of the weak. This is where the battle for individual rights must begin, or this is where it will begin to end. For it is not merely current popular emotion and legal statute which are involved, but twenty centuries of repressively anti-individualistic moral doctrine.

Any physical act, or threat of an act, which places an involuntarily sustained burden denies in principle, and in effect, the right to life of the one suffering the act or its threat. This can take many forms commencing with the obvious such as murder, assault, enslavement, theft, rape, taxation, conscription and many other forms by which the State forces one to sustain unwanted dependents. Logic dictates that an individual have the correlative right to defend his life against initiatory force. And this includes of course, the choice to remove a trespasser from one's property or to remove an unwanted, recalcitrant house guest overstaying his welcome. Any involuntary physical infringement on one's person or non-corporeal property transgresses against the "right to life".

Accordingly, the attempt to enforce the continued residence of the fetus in the womb transgresses the mother's right to her own life. The mother's desire to remove the fetus from her body is fully in keeping with the individual's right to protect with force against an involuntarily sustained burden. Abortion is a form of defensive force against a trespasser. It is not a form of initiatory force. The fact that the embryo-fetus is incapable of conscious choice, or that the mother is acting selfishly or in a fickle rejection of the burden, is not germane to the central issue. The right to one's life requires that one be able to employ defensive means to reject the physical impositions of others for which no explicit consent has been given or no justifiable claim exists. This is the essence of all property rights, of self-ownership and the objectively limited right to one's own life.

Undoubtedly, the removal of the fetus should be accomplished with minimum harm to the fetus -- short of sacrificing the mother's safety -- as excessive force employed even in self-defense can grade into initiatory force. Aside from the use of undue force, the mother has every right to evict the fetus from within her womb and disengage further placental support.

Obviously, this argument does not require a denial of the embryo-fetus' human status or its right to its own life. What becomes clear is that no individual has the "right" to sustain his life (or anyone else's for that matter) by divesting the right of another over his (or her) own life or any portion of that life. Consistency requires that this includes embryo-fetuses if they are in fact to be attributed with human status. The right of an embryo-fetus to its own life is not being denied by the use of defensive force in the process of abortion. What is being denied is the unwarranted privilege of one individual parasitizing the life of another without that person's explicit and willing consent.

Thus, a woman may well regard the drain of nutrients by a developing fetus as an involuntarily sustained burden and an objective infringement on her life. It should be strictly up to the woman whether she is willing to feed and shelter the fetus. An individual's life is an end in itself, it may not be sacrificed whole or in part for any reason. One may live if one can



but one may not coerce someone to subvert one's life. It is also evil to live by the loot forced from others by a third party. Being forced to support others is slavery; a forced sustainment of the fetus is no less a form of slavery. It is not only a breach of the mother's rights but simultaneously constitutes a tragic moral debt burdening the future awareness of the child. To have lived at someone's unwilling expense can only be a stain on the necessarily rational egoist ethical nature of a person. It must be remembered that prohibition of abortion ultimately means pregnancy at gunpoint. One may well ask if it is worth one's life to have been born only by harnessing slave labor to sustain one from the womb!<sup>3</sup>

In response to this position, the anti-abortionists often resort to what may be called an acquired responsibility argument. It is argued that the act of copulation carries with it the burden of a self-evident risk of conception; thus, engendering an assumption defacto of liability on (at least) the mother's part for any resultant existence of fetal self-interest. But as long as the mother has not initiated force or breach of agreement against another individual, she may not be held morally (and, thus, one would expect legally) obligated or liable.

In defense of this acquired-responsibility argument, some have forwarded the legal notion of "implied contract". George Steven Swan tries to argue a case for implied contracts based on the idea that all 'contracts are implied contracts' because meanings are found by implication and inference.<sup>4</sup> Mr. Swan suffers from an epistemological derangement quite common in our age -- reification, i.e., giving substance to abstract concepts which have no referential substance. Evidence requires the explicit and the objectively discernable in order for implications and inferences to be drawn. We do not draw contracts from implications but implications from contracts. The reason for a contract is to establish the specific, explicit terms and conditions of the arrangements between the involved parties. The rest is what was not said, and thus, to which was not agreed.

The anti-abortionist must understand that "implied contracts" cannot exist logically. Such an entity is a flagrant contradiction. The terms of an agreement may only be enforced upon an individual who has been a consenting party to that agreement. An individual may not be held liable for the "implications" of an agreement but only for what has been expressly set forth in written or verbal form. Thus, a woman may not be held liable or obligated in any form to anyone including a fetus in utero for any "implied" agreement or contract to which she has not given her willing and explicit consent. To sanction the concept of implied obligations in any form, for any reason,

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<sup>3</sup>As a rational egoist I would have rather have been aborted than to have been born with the future shame of an enforced pregnancy. What future is there for a human being born under coercion and resentment? To bring children into the world as unknowing beneficiaries of theft and slavery is a moral cruelty which at least equals infanticide for it must blemish the dignity of that person throughout his life.

<sup>4</sup>George Steven Swan "State Imperatives and Abortion, The Consistent Enforcement of Contract". Option, June 1976.



is to invite the rule of subjectivism and the conduct of affairs by whim and arbitrary compulsion. This is, in fact, one of the underlying rationales for the collectivist welfare-state through the idea of the "social contract" which is not explicitly agreed to but implied.

Having been denied the option of "implied contract", the anti-abortionist has no choice but to fall back on the argument that liability for the fetus' welfare is incurred as a consequence not of an implied agreement but the act per se of copulation leading to conception. Seemingly, this argument which is here called a "generosity acquired-liability", has the natural rights view by the throat. In fact, it does not.

Responsibility for the consequences of an action as an enforceable liability to another person may only be incurred by the initiation of physical force or breach of contract where such action has caused objectifiable damage. This, for example, would include inadvertently caused damages resulting directly from one's own actions or by one's property, or by an agent in one's employ (the actions of whom, for which one has specifically accepted responsibility). There may be no damage claimed for so-called "secondary" or "tertiary" consequences. That is, if individual personal responsibility is to be commensurate only with the actual extent of one's authority, i.e., ownership or control over the entities involved.

An individual acting on other things and persons does not "cause" an infinite series of reverberations for which he may be held eternally and infinitely liable. Responsibility for initiating an action which triggers a set of events among non-volitional entities may be attributable to the initiator of the action only to the degree to which the events are objectively understandable as being physically linked. In cases where the entity affected is volitional, its own responses are no longer the responsibility of the initiator of the action.

For example, if Mr. X dynamites a stump which sets off a landslide destroying Mr. Y's house, Mr. X is liable for the damages to Mr. Y. However, if Mr. Y sustains an injury after the fact by trying to dig into the rubble to salvage valuables, he may not morally sue Mr. X. for his injury. An individual's responsibility morally must be limited to what he or she actually does and causes to occur, not to conditions which occur in close proximity or the related actions of others. (The question of willful intent, although of moral significance must be generally outside of the question of legally assignable (and, thus, enforceable) liability for damages and compulsory restitution). In sum, the only form of incurred liability for the consequence of an action which may be compelled by defensive force in gaining restitution and which is consistent with the natural right to life, extends to cases in which the party has sustained a loss as a direct objectifiable consequence of that action.

The act of copulation and the subsequent conception can involve no conceivable violation of the embryo-fetus' right, and thus, may not be used as a basis for assigning liability to the mother or anyone else. Logically, if the life of the embryo-fetus results from the act of conception, the action is prior to the existence of the embryo-fetus and may not be regarded as a violation of its right since its right is a derived consequence of conception and does not exist at the time of the act. A violation of life



and property cannot take place prior to the existence of the said life and property. No breach of rights has occurred, thus, no restitution may be compelled and no subsidiary obligation may be appended as a specific result of the act of conception. Permitting the fetus to flourish in one's womb is in principle identical to comparable acts of generosity. For instance, resuscitating a dying person (i.e., assuming it is the medically proper course of action) does not constitute an act of violence unless the individual dissents. Certainly, one would not be morally or legally compelled in a rational system of law to a compulsory sustenance of the injured person's life thereon. Giving shelter to a traveller carries no rational obligation to extend aid indefinitely (or, in principle, for one additional second or unit of value). Being forced to house and feed an embryo-fetus because one has generated life is, in principle, identical to being sued for a second meal by a dinner guest.

Once this position is understood, the "right-to-lifer" is logically compelled to admit that forcing the mother to bear the fetus, does not constitute a protection of individual rights in any reasonable sense, but sacrifices the mother's rights to that of the fetus. If the fetus is accorded human status, its right may not be superior to anyone else's. The only possible ethical justification for any other position ultimately has nothing to do with natural rights as it must devolve into the non-rational premise of altruism.

Those anti-abortionists, however, who do wish to remain within the frame of reason and the natural rights thesis will find themselves compelled to abandon what has been called here the "implied contract" and "generosity acquired-liability" positions. Unfortunately, once having done so, they often resort to another exotic category of the implied contract argument -- the "social contract" or the symbolological implications of actions made in a group context.

The argument goes that the act of conception is an implicit affirmation to all who would observe of the mother's intent, thus, binding her into an implied social contract by the socially current symbolic implications of her act. Intellectually, this is an act of collectivist desperation. This is the anti-abortionist's last intellectual trump. It relies on a superficial distortion of the old adage that "actions speak louder than words" which originally meant that to act on one's convictions consistent with one's verbal promise to do so is superior to merely promising it. But actions do not generally convey specific symbolologic and explicit conceptual meaning; most actions don't really "speak". Only the category of actions of speech and writing (which includes sign "language" and various forms of signalling) can convey specific meaning. For example, because a female stranger gives me what I interpret to be a "lascivious smile" does not entitle me to arrive at the conceptually explicit conclusion that it is acceptable for me to place my hand on her knee or that she "owes" me a date. If upon asking she agrees, I have evidence of her explicit (symbolologically specific) assent. This assent in recorded form becomes particularly important in regard to the potential intrusion of other parties should I be accused of being a masher. And there might be a difference of interpretation between the lady and myself at some later date when the terms of the original agreement are no longer etched in our memories.

One of the values of language is that it permits a specific definition of intent and reciprocal obligations in recorded form. A motion or even a set



of motions provide perceptual data but are conceptually ambiguous unless accompanied by abstractly explicit symbols. Words and other symbols, especially mathematical signs, convey abstract concepts of great complexity, synthesizing and categorizing principles, attributes and characteristics abstracted from a mass of percepts. A great deal of perceptual information may be derived from observing activity but the attempt to derive an unambiguous conceptual assessment of personal intent or agreement on merely that basis is to say the least, highly uncertain. It also may constitute an extremely dangerous precedent sanctioning the arbitrary interpretation of motive and intent. Concepts are absolutely necessary in reasoning and in the examination of evidence for deriving just resolutions in the affairs of human beings. To raise perceptually-derived impressions to the level of explicit concepts in an intellectual argument is to equate beast with man, mechanism with volition, and range-of-the-moment response with self-aware consciousness. It is a hideous mistake born of intellectual desperation.

The fact that a woman is pregnant may be physically obvious but her intent insofar as she is willing to accept an obligation is not. This can only be communicated through the use of symbols which have specific reference in the world of our existence. As long as no violation of rights has occurred and no voluntary and explicit consent has been given by the woman, she may be free from any sanctions based on perceptually-derived interpretations of her actions. Others may infer all they wish from the perceptual aspect of her condition but they may not, without denying all respect for individual right, coerce her to accept the physical burden of their inferences. There is a real epistemological threshold between concept and percept. Concepts are absolutely necessary for the valid transmission of explicit consent. "Social" or any other kind of inferred consent are invalid. Any claim or obligation enforced on the basis of perceptually inferred consent is a violation of individual rights.

In sum, there is no valid basis for the legal prohibition against a woman's choice to abort which is consistent with any reasoned interpretation of the natural rights of the individual to his or her own life. As long as the woman has not given her explicit consent to incur responsibility for the welfare of the embryo-fetus and does not employ unnecessary force in the eviction of the embryo-fetus from her body, there is no basis for intervention. Any attempt to forcibly prevent her from aborting or penalizing her or anyone involved constitutes a violation of rights. In turn, any attempt to rationalize the sacrifice of the mother's right to abort is a precedent affronting all human liberty and justice and constitutes a rationale for the arbitrary power and tyranny of the State. Thus, in any sense which is consistent with human reason and objectively derived rights, the abortion prohibition is demonstrably invalid in the fullest.

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